

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, D.C. 20510-6200

April 21, 2010

## Via Electronic Transmission

Deborah Bachrach  
Deputy Commissioner  
New York Office of Health Insurance Programs  
State of New York  
P.O. Box 2602  
Albany, NY 12220

Dear Deputy Commissioner Bachrach:

In the United States, the federal and state governments spend roughly \$317 billion every year on the Medicaid program. As Ranking Member of the Senate Committee on Finance, I have an obligation to ensure that taxpayer dollars are appropriately spent on federal health care programs. Like the Medicare program, Medicaid suffers from systemic weaknesses that lead to fraud, waste, and abuse across the program, resulting in higher costs and less health care to those who are in need. The overutilization of prescription drugs, whether through drug abuse or outright fraud, plays a significant role in the rising cost of our healthcare system. The purpose of this letter is to request information regarding certain outliers in New York's Medicaid program and what steps New York takes to monitor rates of utilization.

In recent inquiries, I have asked the U.S. Department of Health and Human Services about physicians prescribing mental health drugs at astonishingly high rates. In addition to these concerns, a recent CNN report detailed the increasing abuse of OxyContin, Roxicodone, and Xanax. Specifically, the report described the role some pain management clinics and physicians play in the black market for these drugs. I write today to better ascertain how high rates of both mental health and pain medication utilization are affecting the Medicaid program, as well as how New York's rates compare to the national rates.

To that end, please provide charts that list of the top ten Medicaid prescribers of the following drugs for the years 2008 and 2009. For each prescriber, please provide his/her prescriber identifier, and the number of prescriptions written per drug per year, and the total amount billed to Medicaid per drug, separated for each year.

- Abilify;
- Geodon;
- Seroquel;
- Zyprexa;

- Risperdal;
- OxyContin;
- Roxicodone; and
- Xanax.

I thank you in advance for your cooperation and request that you provide the requested documents and written responses by no later than May 5, 2010. In your reply, please format information into a chart like the examples provided below. All formal correspondence should be sent electronically in PDF format to [Brian\\_Downey@finance-rep.senate.gov](mailto:Brian_Downey@finance-rep.senate.gov) or via facsimile to (202) 228-2131. Of course should you wish to discuss this matter further, please do not hesitate to contact Christopher Armstrong of my Committee staff at (202) 224-4515.

Sincerely,



Charles E. Grassley  
Ranking Member

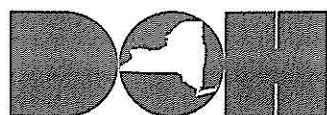
Attachment

**Drug X, 2008**

Prescriber Identifier	Total prescriptions	Total billed to Medicaid
123456789	25,000	250,000
234567891	24,000	240,000
345678912	23,000	230,000
456789123	22,000	220,000
567891234	21,000	210,000
678912345	20,000	200,000
789123456	19,000	190,000
891234567	18,000	180,000
912345678	17,000	170,000
012345678	16,000	160,000

**Drug X, 2009**

Prescriber Identifier	Total prescriptions	Total billed to Medicaid
123456789	25,000	250,000
234567891	24,000	240,000
345678912	23,000	230,000
456789123	22,000	220,000
567891234	21,000	210,000
678912345	20,000	200,000
789123456	19,000	190,000
891234567	18,000	180,000
912345678	17,000	170,000
012345678	16,000	160,000



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.  
*Commissioner*

James W. Clyne, Jr.  
*Executive Deputy Commissioner*

July 30, 2010

Hon. Charles E. Grassley  
Ranking Member  
Senate Finance Committee  
United States Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Grassley:

This is in response to your letter of April 21, 2010, in which you requested specific New York State Medicaid information regarding the utilization of mental health and pain medications. We have enclosed two documents that provide the information for the top prescriber utilization in 2008 and 2009 for each of the drugs that you requested. Please note that we were not able to provide the specific provider identifiers due to concerns with potential misinterpretation and/or misuse of the information. Therefore, we have replaced actual unique prescriber identification numbers with replacement numbers that indicate the prescriber's ranking.

Rest assured that New York State shares your concerns about fraud and abuse of prescription drugs. The Office of the Medicaid Inspector General (OMIG) has primary responsibility for prevention of fraud and abuse within the New York State Medicaid Program. While the New York State Department of Health's (Department) Medicaid Pharmacy Program, Bureau of Pharmacy Policy and Operations (BPPO), is primarily responsible for managing, developing and implementing policies procedures and programs related to Medicaid pharmacy services, BPPO works closely with OMIG and also has a number of procedures and programs in place to combat fraud and abuse; including but not limited to:

- New York's Medicaid Pharmacy Drug Utilization Review Program (DUR) has two separate but complementary components, the Retrospective Drug Utilization Review (RetroDUR) Program and the Prospective Drug Utilization Review Program (ProDUR). Both programs are designed to improve prescribing trends by alerting providers of potential problems. While the primary purpose of DUR is to identify and determine interventions based on inappropriate utilization, the program also provides a basis to identify and report suspected cases of fraud, abuse and aberrant use to the OMIG.
  - RetroDUR case reviewers identify and report suspected cases of fraud, abuse and aberrant use to the OMIG. The focus of referrals is primarily narcotics and narcotic combination drugs of use/abuse, and drugs obtained at a frequency or

amount inconsistent with good medical practice, inconsistent with the type of care and diagnoses seen or inconsistent with age and gender. Referrals may also result from an alert letter response returned by the provider.

- The ProDUR program supports OMIG by examining output from ProDUR and reporting aberrant findings, including pharmacies that consistently override ProDUR denials.
- The Clinical Drug Review Program (CDRP) is aimed at ensuring specific drugs are utilized in a medically appropriate manner. Under the CDRP, certain drugs require prior authorization because there may be specific safety issues, public health concerns, the potential for fraud and abuse or the potential for significant overuse and misuse.
- Prior authorization (PA) call center representatives are trained to detect questionable activity at the call center and make referrals to OMIG accordingly.
- Requests for early refill of controlled substances are referred to the BPPO for review prior to issuance of PA.
- Monthly reports are reviewed for prescriber and pharmacy outliers.
- In accordance with the federal Anabolic Steroid Act, we deny requests for PA of human growth hormones for enrollees aged 21 and over, when use is not for Federal Drug Administration (FDA) approved indications.
- Potential or confirmed billing errors or fraudulent billing identified by drug rebate staff while performing drug rebate resolution activities are referred to the OMIG for follow up activities.

Additionally, the Department's Bureau of Narcotic Enforcement (BNE) is responsible for protecting the public health by combating the illegal use and trafficking of prescription controlled substances. BNE provides millions of secure Official New York State Prescriptions annually to over 95,000 prescribing practitioners across the State. BNE monitors and regulates controlled substances through its issuance of licenses to manufacturers, distributors, hospitals, nursing homes and researchers. BNE Narcotic Investigators investigate suspected drug diversion or illegal sales involving theft, forgery and fraudulent visits to practitioners' offices, and work closely with local, state and federal law enforcement. The BNE also prevents prescription drug abuse through educational materials and presentations for parents, educators and health care professionals.

I hope this information has been helpful and illustrates New York State's commitment to program integrity. If you have any questions, please contact Mr. James Clancy, Assistant Commissioner, Office of Governmental and External Affairs, at (518) 473-1124.

Sincerely,

A handwritten signature in cursive script that reads "Donna Frescatore".

Donna Frescatore  
Deputy Commissioner  
Office of Health Insurance Programs

Enclosures

Cc: Mr. Clancy

**Top 10 New York State Medicaid Prescribers for Eight Selected Drugs**  
**Physician Prescribers Only**  
**Service Date (Date Filled): Calendar Year 2008**

Drugs	Prescriber Identifier	Medicaid Paid Amount	Number of Medicaid Claims (Prescriptions)	Rank (Prescriptions)
ROXICODONE	0002	\$12,205	305	2
ROXICODONE	0003	\$45,362	290	3
ROXICODONE	0004	\$14,375	274	4
ROXICODONE	0005	\$41,994	266	5
ROXICODONE	0006	\$6,813	236	6
ROXICODONE	0007	\$22,060	195	7
ROXICODONE	0008	\$32,670	195	8
ROXICODONE	0009	\$6,953	169	9
ROXICODONE	0010	\$14,254	167	10
SEROQUEL	0001	\$461,878	1,674	1
SEROQUEL	0002	\$312,733	1,465	2
SEROQUEL	0003	\$334,660	1,217	3
SEROQUEL	0004	\$225,073	1,209	4
SEROQUEL	0005	\$204,878	1,068	5
SEROQUEL	0006	\$252,016	1,034	6
SEROQUEL	0007	\$167,605	986	7
SEROQUEL	0008	\$196,218	958	8
SEROQUEL	0009	\$355,976	930	9
SEROQUEL	0010	\$278,850	923	10
XANAX	0001	\$18,331	1,422	1
XANAX	0002	\$23,746	1,369	2
XANAX	0003	\$9,995	929	3
XANAX	0004	\$91,876	906	4
XANAX	0005	\$13,976	891	5
XANAX	0006	\$9,525	744	6
XANAX	0007	\$11,079	686	7
XANAX	0008	\$8,916	664	8
XANAX	0009	\$11,305	646	9
XANAX	0010	\$14,390	617	10
ZYPREXA	0001	\$1,839,630	2,422	1
ZYPREXA	0002	\$501,925	836	2
ZYPREXA	0003	\$212,003	671	3
ZYPREXA	0004	\$435,125	637	4
ZYPREXA	0005	\$444,177	634	5
ZYPREXA	0006	\$337,675	568	6
ZYPREXA	0007	\$460,335	561	7
ZYPREXA	0008	\$280,593	533	8
ZYPREXA	0009	\$282,434	531	9
ZYPREXA	0010	\$351,667	507	10

Source: NYS DOH OHIP Datamart (as of March 2010)



**Top 10 New York State Medicaid Prescribers for Eight Selected Drugs**

**Physician Prescribers Only**

**Service Date (Date Filled): Calendar Year 2008**

<b>Drugs</b>	<b>Prescriber Identifier</b>	<b>Medicaid Paid Amount</b>	<b>Number of Medicaid Claims (Prescriptions)</b>	<b>Rank (Prescriptions)</b>
ABILIFY	0001	\$276,960	855	1
ABILIFY	0002	\$367,114	750	2
ABILIFY	0003	\$292,866	728	3
ABILIFY	0004	\$292,589	643	4
ABILIFY	0005	\$241,013	603	5
ABILIFY	0006	\$242,116	591	6
ABILIFY	0007	\$232,033	528	7
ABILIFY	0008	\$192,530	483	8
ABILIFY	0009	\$192,806	483	9
ABILIFY	0010	\$197,979	479	10
GEODON	0001	\$241,555	681	1
GEODON	0002	\$166,333	492	2
GEODON	0003	\$172,060	481	3
GEODON	0004	\$126,311	415	4
GEODON	0005	\$81,187	359	5
GEODON	0006	\$85,668	346	6
GEODON	0007	\$47,029	317	7
GEODON	0008	\$120,426	316	8
GEODON	0009	\$105,958	291	9
GEODON	0010	\$75,242	283	10
OXYCONTIN	0001	\$2,092,184	2,061	1
OXYCONTIN	0002	\$1,071,368	960	2
OXYCONTIN	0003	\$239,454	811	3
OXYCONTIN	0004	\$414,852	444	4
OXYCONTIN	0005	\$210,079	342	5
OXYCONTIN	0006	\$84,038	277	6
OXYCONTIN	0007	\$221,565	276	7
OXYCONTIN	0008	\$199,580	238	8
OXYCONTIN	0009	\$241,420	207	9
OXYCONTIN	0010	\$109,383	202	10
RISPERDAL	0001	\$324,660	1,329	1
RISPERDAL	0002	\$218,025	962	2
RISPERDAL	0003	\$236,789	913	3
RISPERDAL	0004	\$184,217	894	4
RISPERDAL	0005	\$218,086	893	5
RISPERDAL	0006	\$200,632	879	6
RISPERDAL	0007	\$120,910	844	7
RISPERDAL	0008	\$172,711	807	8
RISPERDAL	0009	\$189,510	804	9
RISPERDAL	0010	\$166,365	800	10
ROXICODONE	0001	\$69,257	430	1



**Top 10 New York State Medicaid Prescribers for Eight Selected Drugs**

**Physician Prescribers Only**

**Service Date (Date Filled): Calendar Year 2009**

<b>Drugs</b>	<b>Prescriber Identifier</b>	<b>Medicaid Paid Amount</b>	<b>Number of Medicaid Claims (Prescriptions)</b>	<b>Rank (Prescriptions)</b>
ROXICODONE	0003	\$65,471	401	3
ROXICODONE	0004	\$74,791	376	4
ROXICODONE	0005	\$18,049	307	5
ROXICODONE	0006	\$76,979	293	6
ROXICODONE	0007	\$48,260	254	7
ROXICODONE	0008	\$7,902	254	8
ROXICODONE	0009	\$46,194	253	9
ROXICODONE	0010	\$17,558	245	10
SEROQUEL	0001	\$525,110	1,835	1
SEROQUEL	0002	\$240,820	1,378	2
SEROQUEL	0003	\$293,801	1,377	3
SEROQUEL	0004	\$378,815	1,300	4
SEROQUEL	0005	\$343,914	1,282	5
SEROQUEL	0006	\$355,302	1,275	6
SEROQUEL	0007	\$193,973	1,274	7
SEROQUEL	0008	\$396,079	1,261	8
SEROQUEL	0009	\$275,057	1,226	9
SEROQUEL	0010	\$252,761	1,209	10
XANAX	0001	\$34,800	2,825	1
XANAX	0002	\$27,248	1,899	2
XANAX	0003	\$17,995	1,212	3
XANAX	0004	\$11,257	1,174	4
XANAX	0005	\$23,289	1,001	5
XANAX	0006	\$10,038	933	6
XANAX	0007	\$12,891	889	7
XANAX	0008	\$12,832	885	8
XANAX	0009	\$8,749	795	9
XANAX	0010	\$9,199	753	10
ZYPREXA	0001	\$1,581,655	1,970	1
ZYPREXA	0002	\$204,486	743	2
ZYPREXA	0003	\$253,844	735	3
ZYPREXA	0004	\$402,129	613	4
ZYPREXA	0005	\$506,305	583	5
ZYPREXA	0006	\$343,346	538	6
ZYPREXA	0007	\$359,019	496	7
ZYPREXA	0008	\$186,410	487	8
ZYPREXA	0009	\$251,137	480	9
ZYPREXA	0010	\$326,063	479	10

Source: NYS DOH OHIP Datamart (as of March 2010)

**Top 10 New York State Medicaid Prescribers for Eight Selected Drugs**

**Physician Prescribers Only**

**Service Date (Date Filled): Calendar Year 2009**

<b>Drugs</b>	<b>Prescriber Identifier</b>	<b>Medicaid Paid Amount</b>	<b>Number of Medicaid Claims (Prescriptions)</b>	<b>Rank (Prescriptions)</b>
ABILIFY	0001	\$488,344	1,470	1
ABILIFY	0002	\$385,734	915	2
ABILIFY	0003	\$392,681	834	3
ABILIFY	0004	\$317,549	732	4
ABILIFY	0005	\$337,076	728	5
ABILIFY	0006	\$304,523	696	6
ABILIFY	0007	\$296,138	650	7
ABILIFY	0008	\$304,826	638	8
ABILIFY	0009	\$259,288	622	9
ABILIFY	0010	\$293,424	595	10
GEODON	0001	\$207,263	551	1
GEODON	0002	\$100,951	479	2
GEODON	0003	\$170,255	457	3
GEODON	0004	\$183,590	453	4
GEODON	0005	\$168,281	440	5
GEODON	0006	\$101,428	377	6
GEODON	0007	\$102,003	329	7
GEODON	0008	\$92,368	315	8
GEODON	0009	\$99,488	310	9
GEODON	0010	\$76,524	309	10
OXYCONTIN	0001	\$2,064,873	2,522	1
OXYCONTIN	0002	\$771,878	769	2
OXYCONTIN	0003	\$197,848	506	3
OXYCONTIN	0004	\$270,074	418	4
OXYCONTIN	0005	\$490,675	379	5
OXYCONTIN	0006	\$323,948	366	6
OXYCONTIN	0007	\$223,820	267	7
OXYCONTIN	0008	\$232,201	255	8
OXYCONTIN	0009	\$221,700	249	9
OXYCONTIN	0010	\$141,731	240	10
RISPERDAL	0001	\$131,791	1,768	1
RISPERDAL	0002	\$86,460	1,203	2
RISPERDAL	0003	\$87,225	895	3
RISPERDAL	0004	\$60,979	891	4
RISPERDAL	0005	\$94,218	753	5
RISPERDAL	0006	\$60,743	752	6
RISPERDAL	0007	\$82,959	750	7
RISPERDAL	0008	\$62,535	696	8
RISPERDAL	0009	\$38,872	691	9
RISPERDAL	0010	\$50,452	661	10
ROXICODONE	0001	\$125,855	670	1
ROXICODONE	0002	\$46,037	416	2

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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**United States Senate**

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

January 23, 2012

**VIA ELECTRONIC TRANSMISSION**

Donna Frescatore

Deputy Commissioner

Office of Health Insurance Programs

New York Department of Health

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Dear Ms. Frescatore:

On July 30, 2010, your state provided my office with data regarding the top ten prescribers of several pain management and mental health drugs in your state. These types of drugs have addictive properties, and the potential for fraud and abuse by prescribers and patients is extremely high. Mental health drugs continue to be prescribed at astounding rates and pain management clinics are turning into a hotbed for black market painkillers. When these drugs are prescribed to Medicaid patients, it is the American people who pay the price for over-prescription, abuse, and fraud.

After an extensive review of prescribing habits of the serial prescribers of pain and mental health drugs in New York, I have concerns about the oversight and enforcement of Medicaid abuse in your state. While I am sensitive to the concerns of misinterpretation of the data you provided, the numbers themselves are quite shocking.

For example in 2009, the number one prescriber of OxyContin wrote 2,522 scripts – more than three times the amount of the second highest prescriber. Likewise, the top prescriber of Xanax wrote 2,825 scripts, almost a thousand more than the second highest, while the top prescriber of Zyprexa wrote 1,970 scripts, which amounted to 1,227 more than the second leading prescriber.

It is my intention to ensure that each of the states is adequately monitoring, investigating, and stopping fraud and over-prescription of these types of drugs. Therefore, please provide answers to the following questions:

1. What action, if any, has your agency taken with respect to the prescribers identified to the Committee?
2. If there has been no action taken with respect to these prescribers, please explain why not.
3. Please identify which of the providers identified to the Committee remain eligible to bill the Medicaid Program.
4. Please provide the 2010 and 2011 numbers for the top prescribers of these same drugs.
5. Has each of these prescribers been cross-checked for complaints or misconduct with the state medical board or the National Practitioner Data Bank? If not, do you plan to do so?
6. Have any of the prescribers identified to this Committee been referred to your state medical board?
7. Is there any system set up in your state to identify and monitor excessive prescription writing? If not, why not?
8. Have you received any training or guidance from the Centers for Medicare and Medicaid Studies to help identify potential issues with prescription drugs?
9. Does your state maintain a database of all prescribed controlled-substances? If so, what entities have access to it?
10. Does your state have any point-of-sale restrictions related to maximum units, prior authorization, therapeutic duplication, or early refill? If not, why not?
11. Were any of these top ten prescribers identified in the federal-mandated Drug Utilization Review or CMS-base retrospective reviews?
12. Does your state have any programs in place to educate providers about the prescription of antipsychotics to children and adolescents?

Thank you in advance for your cooperation and attention in this matter. When responding to this letter, please number your answers in accordance with my questions. I would appreciate a response by February 13, 2012. If you have any questions, please do not hesitate to contact Erika Smith of my staff at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley  
Ranking Member  
Committee on the Judiciary



**NEW YORK**  
*state department of*  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

August 2, 2012

Trish O'Hara  
Project@psychsearch.net

Re: FOIL #12-03-056

Dear Ms. O'Hara:

This letter responds to your FOIL request for a copy of the Department of Health's response to a letter from Senator Grassley dated January 23, 2012.

At this time, the Department has no record responsive to your request that is subject to release under New York's Freedom of Information Law. To the extent that any records exist related to the subject matter of your request, they are intra-agency communications that are exempt from disclosure under Public Officers Law 87(g), which exempts from disclosure inter-agency or intra-agency communications and other materials that are not (i) statistical or factual tabulations or data, (ii) instructions to staff that affect the public, (iii) final agency policy or determinations, or (iv) external audits.

Should you feel that you have been unlawfully denied access to records, you may appeal such denial in writing within 30 days to the Records Access Appeals Officer, Public Affairs Office, Empire State Plaza, 1455 Corning Tower, Albany, New York 12237-0002.

Should you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Very truly yours,



James P. O'Hare  
Records Access Officer